

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 19-105
Fees for Fiscal Year 2019)	

**COMMENTS OF EHOSTAR SATELLITE OPERATING CORPORATION,
HUGHES NETWORK SYSTEMS, LLC, INTELSAT LICENSE LLC, INMARSAT INC.,
SES AMERICOM, INC., SPACE EXPLORATION TECHNOLOGIES CORP.,
AND WORLDVU SATELLITES LTD.**

EchoStar Satellite Operating Corporation, Hughes Network Systems, LLC, Intelsat License LLC, Inmarsat Inc., SES Americom, Inc., Space Exploration Technologies Corp., and WorldVu Satellites Ltd. (collectively, the “Satellite Operators”) submit these comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM”) on proposed regulatory fees for fiscal year (“FY”) 2019.¹ The Commission has proposed substantial annual fee increases for geostationary orbit (“GSO”) space station, non-geostationary orbit (“NGSO”) space station, and earth station licenses—approximately 25%, 26%, and 31%, respectively. The fee increases are the result of a dramatic 19.84% increase in the percentage of total full-time equivalents (“FTEs”) assigned to the International Bureau.² Because the Commission does not provide a “sufficient description” of the facts underlying the higher proportion of International Bureau FTEs, companies subject to

¹ Assessment and Collection of Regulatory Fees for Fiscal Year 2019, Notice of Proposed Rulemaking, MD Dkt No. 19-105, FCC 19-37 (rel. May 8, 2019) (“NPRM”).

² See NPRM at ¶ 13.

regulatory fees, such as the Satellite Operators, do not have a meaningful basis on which to comment in this proceeding.³ As discussed herein, to ensure a fair and predictable rulemaking proceeding, the Commission must provide a factual basis for the substantial fee increases on which the public can reasonably provide comment or it cannot adopt its proposal.

The applicable statutory provisions require the Commission to “assess and collect regulatory fees at such rates...that will result in the collection...of an amount that can reasonably be expected to equal the amounts described in [the Appropriations Act] with respect to such fiscal year.”⁴ The amount specified in the Appropriations Act for FY 2019 represents an increase of 5.3% over that of FY 2018.⁵ The Commission states that costs will continue to be assessed in a similar manner to previous years: based on the benefits provided to the licensee from the efforts of the equivalent number of full-time Commission employees performing these activities.⁶ While the Commission is not held to a strict cost-based fee under § 9(b)(1)(a),⁷ absent specific justification, licensees should be able to reasonably expect regulatory fees to increase proportionately to the increase in the annual Commission budget.

Changes to regulatory fees are intended to reflect changes in the industry and at the Commission. Although regulatory fees need not be precisely calibrated to the actual cost of the

³ 5 U.S.C. § 553(b)(3).

⁴ 47 U.S.C. § 159 (b).

⁵ Compare NPRM at ¶ 2 (proposing to collect \$339,000,000 for FY 2019), *and* Assessment and Collection of Regulatory Fees for Fiscal Year 2018, Report and Order and Order, FCC 18-126 (2018) (“2018 Fee Order”) at ¶ 1 (adopting schedule to collect \$322,035,000 for FY 2018).

⁶ NPRM at ¶ 10 & n.35, *citing* 47 U.S.C. § 159(d).

⁷ See Assessment and Collection of Regulatory Fees for Fiscal Year 2004, Report and Order, 19 FCC Rcd 11662, 11666, (Jun. 24, 2004) (“2004 Fee Order”).

Commission's efforts, there must be a rational basis for adopting any changes to the fee schedule—particularly for increases that significantly exceed an appropriated Commission budget increase.⁸

In previous rulemakings proposing regulatory fee increases, the Commission has provided clear reasoning for extraordinary increases to the fee schedule.⁹ In this case, however, the NPRM proposes a 19.98% increase in the International Bureau FTE allocation without providing any justification for the substantial change.¹⁰ The only other bureau that has a proposed increase in FTE allocation is the Media Bureau, with a moderate increase of 2.19%. In contrast, the Wireless and Wireline Bureaus have a proposed decrease in FTE allocation of 4.49% and 2.57%, respectively. The Commission states broadly that the updated proportions reflect changes in FTE allocations over the course of 2019, including recent agency reorganizations, but does not provide a specific explanation of these factors.¹¹

This sharp upward shift in the International Bureau's FTE allocation results in the Commission's proposed radical increase in the regulatory fees paid by the International Bureau's

⁸ 5 U.S.C. § 553(c); *see also* 2004 Fee Order at ¶ 9; *Automotive Parts & Accessories Association v. Boyd*, 407 F.2d 330 (D.C. Cir. 1968) (“This exercise need be no less searching and strict in its weighing of whether the agency has performed in accordance with the Congressional purposes...The paramount objective is to see whether the agency, given an essentially legislative task to perform, has carried it out in a manner calculated to negate the dangers of arbitrariness and irrationality in the rules...”).

⁹ *See, e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 2014 et al.*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10772-73 (2014) (reallocating International Bureau FTEs from submarine cable operators to satellite services and implementing the change by adopting a 7.5% increase in fees for earth station licensees).

¹⁰ *See* NPRM at ¶ 13.

¹¹ *Id.* at n.45.

licensees from 2018 to 2019.¹² Under the schedule set forth in the NPRM, GSO space station fees increase by 25% from \$127,850 to \$159,625; NGSO space station fees increase 26% from \$122,775 to \$154,875; and earth station fees increase 31% from \$325 to \$425.¹³ These extraordinary increases could not reasonably have been anticipated by the Satellite Operators when they established their FY 2019 regulatory fee payment budgets.¹⁴

The Administrative Procedures Act (“APA”) requires that an agency provide notice of “either the terms or substance of the proposed rule or a description of the subjects and issues involved.”¹⁵ The courts have elaborated that this requires that the notice be “sufficient to fairly apprise interested parties of the issues involved.”¹⁶ Here, because the Commission has not explained the rationale for the substantial increase in the International Bureau’s FTE allocation, and the resulting increase in space station and earth station regulatory fees, satellite service licensees are left completely unable to comment on whether the Commission has a reasonable basis for such a radical change in the fee schedule.

Without any factual basis in the record supporting the Commission’s proposed large increases in the space station and earth station fees, the proposed increases, if adopted, would be arbitrary, capricious, and unduly burdensome on licensees. Pursuant to Section 553(b)(3) of the APA, the Commission must provide the public with a “sufficient description” of the justifications

¹² The number of payment units in each of these categories for FY 2019 remains relatively unchanged from FY 2018. *Compare* NPRM at Appendix A, *and* 2018 Fee Order at Appendix B.

¹³ *See id.*

¹⁴ *See supra* n. 8.

¹⁵ 5 U.S.C. § 553(b)(3).

¹⁶ *Action for Children's Television v. FCC*, 183 U.S. App. D.C. 437, 564 F.2d 458, 470 (D.C. Cir. 1977) (internal quotation marks and citations omitted).

for increasing the proposed fees by this magnitude in order to facilitate informed comment in this rulemaking proceeding. Accordingly, the Commission should not adopt the proposed fee increases on space and earth stations.

Respectfully submitted,

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June 7, 2019